



PUBLISHED BY: THE JUDGE ADVOCATE GENERAL'S SCHOOL

CHARLOTTESVILLE, VA. 22901

DRUG USE AND ABUSE IN THE ARMY

The following are the remarks of Brigadier General Robert G. Gard, Jr., Director of Discipline and Drug Policy, Department of the Army, made during the symposium on Drug Use and Abuse at the 1971 Judge Advocate General's Conference.

"What I hope to do today is to provide an overview of the Department of the Army program as a basis for discussion. We have always had a drug problem in the military. However, we have only very recently had a Department of the Army Alcohol and Drug Abuse prevention and control plan. Until about three months ago our policy was orientated exclusively toward law enforcement. The President's announcement of the 17th of June changed this. He declared a national counter-offensive and called drug abuse public enemy number one. He emphasized to the Department of Defense that the military services should not discharge drug dependent servicemen into our already crime-ridden streets without some effort to treat and rehabilitate. The Secretary of Defense, in turn, issued guidance to the Service Secretaries which I will summarize very briefly, as follows: First, identify and detoxify Vietnam returnees using drugs; provide them treatment and an opportunity for rehabilitation; and then extend the program world-wide as fast as you can. The urgency of this problem caused us to begin implementing programs not only before we could provide the necessary resources,

but also before we could devise and circulate adequate plans. As I know all of you in the field realize, we bombarded you with a series of messages to provide the maximum notice that we could, and to keep you posted on the instructions as we received them. We began to test Vietnam returnees immediately, and we established a supporting program here in the United States on about 1 August. We started screening returnees from other overseas areas about the first of September. Then we phased in unannounced testing and treatment on station, world-wide.

"With that as a background, I thought that the best way to structure my substantive remarks would be to look at the concept of the program, the steps or functions in it, and to highlight some of the problems for you. The functions within the program are: prevention, identification, detoxification and treatment, rehabilitation, evaluation, and research and development.

"Prevention is sought through both education and law enforcement. Drug abuse, except for alcohol, is a relatively new problem in the Army, and there is a general lack of information and understanding. We have special problems of communication, the so-called generation gap, and a special credibility problem caused, at least in part, by exaggerating the effects of marihuana, and our own unwillingness to recognize alcohol, which in their eyes is very much a drug just as the drug they are using. We have, I feel, an institutional obligation to insure that no soldier begins the use of any drug out of ignorance. For some, drugs are not the problem, but the solution to their problem, and we must insure that the soldier is aware of alternatives other than escaping from his problem through drug abuse.

Distribution of *The Army Lawyer* is one to each active duty Army judge advocate and Department of the Army civilian attorney. If your office is not receiving sufficient copies of *The Army Lawyer* to make this distribution, please write the Editor, *The Army Lawyer* and an adjustment in the distribution to your installation will be made.

TABLE OF CONTENTS

- 1 Drug Use and Abuse in the Army
- 5 Line of Duty Requirements Related to Drug Abuse
- 6 The Army Judiciary Today
- 8 Lessons in Military Law
- 10 New Criminal Investigation Command Described
- 11 Transfer of Military Personnel
- 12 Report from the U. S. Army Judiciary
- 14 Medical Care Recovery from Workmen's Compensation Continued
- 16 Claims Items
- 18 Legal Assistance Items
- 19 Chapter 10 Discharges—Preventive Maintenance
- 20 Information For Commanders
- 22 Presidential And Congressional Inquiries
- 23 Procurement Legal Service
- 25 Federal Statutes v. International Agreements
- 25 Court Reporting Equipment Study
- 25 Environmental Law Seminar
- 26 Personnel Section
- 27 Current Materials of Interest

The Judge Advocate General
Major General George S. Prugh

The Assistant Judge Advocate General
Major General Harold E. Parker

Commandant, Judge Advocate General's School
Colonel John Jay Douglass

Editorial Board
Colonel William S. Fulton, Jr.
Major James A. Endicott, Jr.

Editor
Captain Stephen L. Buescher

Articles Editor
Captain Donald N. Zillman

The Army Lawyer is published monthly by The Judge Advocate General's School. By-lined articles represent the opinions of the authors and do not necessarily reflect the views of The Judge Advocate General or the Department of the Army. Manuscripts on topics of interest to military lawyers are invited to; Editor, The Army Lawyer, The Judge Advocate General's School, Charlottesville, Virginia 22901. Manuscripts will be returned only upon specific request. No compensation can be paid to authors for articles published. Funds for printing this publication were approved by Headquarters, Department of the Army, 26 May 1971.

"Another target group for education is composed of leaders and supervisors. Emphasis is not only on the technical aspects of drugs, about which we all know very little, but on the drug scene, the drug culture, the causes of drug abuse, the requirement to establish the kind of military environment which will make drug abuse less likely to occur, and providing the opportunity for rehabilitating the drug dependent soldier.

"Finally, the program looks at the junior leader who straddles these two groups. He has an especially difficult problem with his command responsibility on the one hand, and his affiliation and association with the younger generation on the other.

"At the Department of the Army we are going to try to assist commanders by establishing an alcohol and drug abuse prevention and control course of about 2 to 3 weeks in length. The course will try to provide knowledge concerning drugs, and the drug scene, and also to cover educational techniques, designed to reach these target audiences that I have just outlined. We are going to ask the commanders to send teams, perhaps four men, who could be lawyers, physicians, chaplains, MP's, or even line officers, and then we hope to immerse these people in the drug education business and return them to the commanders to train other teams from subordinate commands, or to be employed as the commanders may desire.

"In addition to prevention through education, the program also uses law enforcement. Basically, the effort is to suppress the supply, but also, through punishment in appropriate cases, to deter the use of drugs on the part of those for whom this technique may exert some influence. Given the nature of our society now, and the prevalence of drug use, there are many who question the effectiveness of law

Note:

This will be the last issue in Volume 1. Volume 2 will begin with the January 1972 issue and will continue for the next 12 issues during the calendar year.

enforcement as a deterrent, particularly on some of the more common drugs, such as marijuana. In this regard, let me quote from a January 1971 *Military Law Review* article by Major Charles Hoff entitled "Drug Abuse." He was addressing, in this particular case, the policy of discharging, by reason of unfitness, those members who require prolonged treatment or who are unlikely to return to duty. In this context he states:

Military lawyers would do well to keep this policy in mind when advising commanders on whether to prefer charges at all for acts of addiction. Unless a highly aggravated crime has been perpetrated it would appear preferable to explore the rehabilitation potential of the offender with a view toward possible administrative separation from the service.

To this should be added a caveat: this is clearly a judgmental matter that must be tailored to the individual case.

"The second functional area is that of identification. The most famous is biochemical urine testing and clinical evaluation. Another technique is observation by commanders and the soldier's fellows, and, indeed, apprehension of individuals is a way of identifying those who use drugs. Finally is the voluntary act of the individual user under what we now call the exception program. We first called it amnesty. That seemed to promise too much, so we used the term immunity, but that got us in trouble with the lawyers. We have shifted now to exemption. But exemption is, of course, a very limited concept. If the individual volunteers for treatment or if he is identified as a drug user by analysis screening, he cannot be prosecuted under the Uniform Code of Military Justice, nor receive a discharge under less than honorable conditions, solely on the basis of his past individual use of drugs. At the same time, certain administrative actions are required. First, by statute, an individual accrues bad time and must forfeit his pay for the period he is treated as an in-patient. A line of duty determination at the time of his discharge from the hospital, is the mechanism by

which we obey that law. If it were to be determined to be in the line of duty, as some advocate, this would enable a member to claim disability for drug abuse later. There is proposed legislation to provide relief from the assessment of bad time and pay forfeiture in these cases. Other administrative action, of course, may include suspension of a security clearance or removal from sensitive positions. Thus, the exemption program has inherent in it obvious disincentives. In addition to its already ambivalent nature, a drug abuse is after all illegal and does carry heavy penalties.

"Some commanders are compounding this already difficult situation by the use of a written contract, often containing such statements as: "Exemption will be granted only once," or "further evidence of drug abuse will result in withdrawal of exemption amnesty." This is caused in most cases by confusing a period of intensive treatment, which commanders don't want individual soldiers to repeat again and again, with exemption from prosecution based on a positive urine. Naturally, the latter exemption cannot be withdrawn, and must be granted if the only positive evidence of drug abuse is a positive urine, or the statement of the individual. I suggest that you assist your commanders, not only in eliminating errors from such contracts or instructions, but also in simplifying, or better yet recommending elimination of those that serve no useful purpose. After all, the purpose of the exemption program is to identify the drug abuser and assist him, and it is in that spirit that the program should be administered. Our DA plan is confusing in this respect and we will correct it.

"The next functional area is detoxification and treatment of all of those who are identified by whatever means. Our concept is to provide in-patient treatment for the minimum essential period.

"Fourth, and a very controversial area, is rehabilitation. We examined three alternatives. Centralized location, regional centers, and decentralized rehabilitation, with two sub-variations. One to assign the individual to

a normal kind of unit assignment. The other to limit his assignment, at least in the near term, to TD units only. The major conclusions we drew were these. First, the regional solution did not maximize the advantages nor minimize the disadvantages, and this was one of those middle grounds that bureaucracy so often arrives at, that we considered the least desirable solution of all. The centralized solution would enable us to concentrate our best treatment and rehabilitation talent, and it would minimize the impact on the unit commanders. However, the Office of Surgeon General was completely unanimous that this would provide the least favorable prognosis for rehabilitation. Therefore, the decentralized solution which offered the best prognosis for rehabilitation was adopted. It recognized drug abuse as an indemnity problem in the military community which must be handled as such. With the decision to decentralize the effort, it was planned that overseas returnees would be evacuated to one of the 34 larger CONUS hospitals with mental hygiene clinics. The soldier would be placed in the military unit, to permit him to utilize his training and skill and function as normally as possible, and in this regard the TD unit variation was rejected. We would use halfway or RAP houses for transitional treatment as appropriate. The objective is to return the reassignee to full and effective duty if possible, and, in the case of the separatee, to insure continuity of his treatment and rehabilitation by phasing him into a Veteran's Administration or other civilian treatment program prior to discharge whenever possible.

"Some questions arise. First, as to the soldier with time remaining in the service. Is rehabilitation an appropriate mission for the Army, especially given all the other problems that plague us? The answer, of course, is yes. We must make an effort to contribute to the solution of this national epidemic. First because we have been told to do so, and secondly, because we should. However, our guidance from the Secretary of Defense contains an important qualification. When extended treatment is indicated, the service member will be phased into VA programs. Thus, while a gen-

uine effort at rehabilitation is required, commanders are not expected to coddle recalcitrants who will not, or those who cannot, respond within a reasonable period. Our general guidance to the field is that about 60 days is a reasonable period for rehabilitation efforts. Now there is nothing sacrosanct about 60 days. The idea is simply to convey that some long term effort is necessary. But the incorrigible need not be retained that long, although we do expect instructions from the Secretary of Defense establishing 30 days as an irreducible minimum period of treatment. On the other hand, the efforts must be genuine. Cases in which the soldier is treated with hostility and not given the opportunity for rehabilitation, should not be considered failures. So much depends on the unit environment and the command leadership in providing rehabilitative support. The criterion of progress should be effective performance of the soldier and a positive attitude. Like attempts to quit smoking, and I think that many of us have had that experience, the nature of drug dependency is recidivism. A positive urine during the rehabilitative phase should not be a *prima facie* cause to judge rehabilitation a failure, a practice unfortunately being followed in some commands. Secondly, why are we insisting on transferring the separatee into a VA facility against his will, prior to discharge. Well, of about 2200 medical evacuees from Vietnam through the 26th of September, 7 have sought treatment in VA facilities. I feel that there is a reasonable presumption of drug dependency or other serious problems on the part of the soldier caught in this urine screen in Vietnam, because he knows when he will be tested. The program has been given wide publicity. He is well aware that his return to the States will be delayed and he will be put into a stateside hospital, rather than taking leave. And what is disturbing to me and many others, is that so many of these soldiers are unable to abstain from taking drugs for the 3 or 4 days necessary to beat that test. The separattees coming back have proved hostile or at least apprehensive about follow-on rehabilitative programs. The objective is to place them in a

civilian treatment facility while we have control over them, in the hope that they will develop associations that will relieve their apprehension, break down their hostilities, and encourage them to continue treatment after their discharge.

"Fifth, in the phases I was going to discuss, an evaluation of our programs is necessary. There is no conventional wisdom nor generally accepted solution to the drug abuse problem, and our concept is to encourage local initiatives and not to try to dictate models for treatment and rehabilitation. This recognizes that talents of individuals vary considerably and what the key personnel believe will work, will work, and what they believe will not work, won't because they won't be able to support it. However, the nature of this problem requires the collection of data for management purposes and for evaluation purposes. This is compounded by the high level interest and requests for data from the White House and the Office of the Secretary of Defense. This is why your commands have been bombarded once again with changing requests for information which we did not anticipate earlier would be required. This evaluation must span all aspects of the program.

"Finally, the sixth phase, the research and development effort, is also essential to understand the complexities of the problems, discover new techniques, and evaluate progress. Our medical R&D commands got a \$3 million program. It includes identification techniques, study of the military drug scene, and the medical aspects of the program. The Army Research Office, and the Office of Chief of Research and Development has a program to develop tests and evaluate experimental educational techniques. The Office of Chief of Chaplains is studying the effective value systems and religious phenomenal on drug abuse.

"I know you are well aware of the seriousness of the drug abuse problem in the Army and in society, and the priority of our crash program which is barely underway. Let me conclude by saying that it is a community and, therefore, a command problem. As special staff officers to the commander, you have a vital role to play in shaping the program and providing advice and assistance to the commander. And all of us have the opportunity in this program to make a significant contribution, not only to the Army but to American society as well."

LINE OF DUTY REQUIREMENTS RELATED TO DRUG ABUSE

*By CPT Norman L. Goldberg, Military Personnel Law Team,
Administrative Law Division, OTJAG*

Under the program described by General Gard in the previous article the Department of the Army exempts individuals volunteering for treatment or identified as drug users through a urinalysis program from punitive action under the Uniform Code of Military Justice, or from administrative action which could lead to a discharge under other than honorable conditions. However, as noted by General Gard, current law does not permit authorizing participants in the program to be excluded from "time lost" and "pay forfeiture" requirements.

Accordingly, subparagraph 2-3a(5) of Army Regulation 635-200, 15 July 1966, re-

quires that enlisted members make up time lost as a result of intemperate drug or alcohol usage. This regulation is based upon section 972 of title 10, United States Code, which provides in pertinent part that an enlisted member who is unable for more than one day, as determined by competent authority, to perform his duties because of intemperate use of drugs or alcoholic liquor is liable, after his return to full duty, to serve for a period that, when added to the period that he served before his absence from duty, amounts to the term for which he was enlisted or inducted. In addition, subparagraph 5-19a(3)(a) of Army Regulation 600-10, 7 June 1968, provides that any disease or injury resulting from the in-

temperate use of intoxicating liquor or drugs is considered as having resulted from the member's own misconduct. The forfeiture of pay which results from such a finding is required by section 802 of title 37, United States Code. That provision requires forfeiture of pay for any continuous period of absence from a member's regular duties for more than one day because of disease that is directly caused by and immediately follows his intemperate use of alcoholic liquor or habit-forming drugs. The Army presently utilizes the line of duty investigation and subsequent findings in administering these statutes and regulations. The problem of the effect of line of duty determinations on an individual's desire to volunteer for the treatment and rehabilitation program was early recognized by the Army. In an effort to alleviate the problem, several courses of action have been undertaken.

To preclude unnecessary administrative workloads and to insure that medical data remains in medical channels, the Department of the Army has amended the provisions of Chapter 5, Army Regulation 600-10, in cases of individuals volunteering for treatment under the Drug Program and those identified through urinalyses as drug users. The new procedure precludes the necessity for completion and forwarding through channels of a formal line of duty investigation for eventual permanent filing in the service member's personnel file. Instead, the Hospital Admission and Disposition Report is annotated with the phrase "Not In Line of Duty—Due To Own Misconduct." However, formal line of duty investigations are still required in cases where the injuries or diseases are incurred while under the influence of drugs, where the in-

dividual has not volunteered for treatment or been identified under the Drug Identification and Treatment Program, or when the individual initially wishes to appeal the line of duty finding.

H.R. 9503, a Department of Defense-sponsored Bill to authorize a treatment and rehabilitation program for drug dependent members of the Armed Services, is presently before the House Armed Services Committee. The Bill, if enacted into law, obviates the pay forfeiture and time lost provisions of the aforementioned statutes. While this enabling legislation does not eliminate the requirement for pay forfeiture and the requirement to make up time lost completely, it does give the Secretary of Defense discretion to provide by regulation that time spent by a member undergoing treatment for drug dependence need not be counted as time lost under section 972, title 10, United States Code, nor need the provisions of section 802, title 37, United States Code, concerning forfeiture of pay be applied during the treatment period.

During the interim period, Headquarters, Department of the Army, has established a policy of waiving the requirement to make up time lost for those individuals transferred to the Veterans' Administration for treatment or who are being discharged for the convenience of the Government under paragraph 5-3, Army Regulation 635-200.

If legislation is passed, it is anticipated that many of the problems concerning line of duty determinations will be solved. Until that time care should be exercised by staff judge advocates to insure compliance with the line of duty provisions of the Army Drug Program.

THE ARMY JUDICIARY TODAY

The following are the remarks of Chief Judge Kenneth J. Hodson, U. S. Army Court of Military Review, made at the 1971 Judge Advocate General's Conference.

"I am pleased to report on the State of The Army Judiciary. When I was The Judge Ad-

vocate General, I dealt with military justice mainly in terms of numbers, rates, trends, policies and legal manpower.

"In the Army Judiciary, I look at military justice through records of trials, where I have an opportunity to appraise the system by

observing the actions of investigative officers, convening authorities, counsel, staff judge advocates, and trial judges. In disposing of cases at the appellate level, we are reconciled to the fact that we can't please everyone; we sometimes feel that our opinions please no one. Our critics sometimes forget that we can't review errors out of the record; we can't put missing evidence into the record; we can only judge the record as we find it.

"While I do not expect that every case will be handled perfectly at the trial level, I have been surprised and distressed at the number and kind of heedless, needless errors that we find in the records examined by us.

"If trial judges would take a few extra moments to make sure that they are "following the book" in advising the accused of his right to counsel (U. S. v. Donohew, 18 USCMA 149, 39 CMR 149) and in inquiring into the providency of a plea of guilty (U. S. v. Care, 18 USCMA 535, 40 CMR 247), hundreds of man-hours would be saved at the appellate levels.

"There would be a similar saving of appellate manhours if staff judge advocates would take an extra 15 to 20 minutes in each case to check the Court-Martial Data Sheet and to compare the statements in their post-trial review with the record of trial and the allied papers. Among the common errors which could be eliminated by this final personal check are these:

(1) Failing to advise the convening authority of pertinent factors, such as the recommendation of the accused's commanders or the recommendation of the military judge.

(2) Misadvising the convening authority that the accused pleaded guilty when, in fact, he pleaded not guilty; or that he pleaded not guilty when he pleaded guilty; or that he was found guilty of an offense of which he was found not guilty, or which was dismissed on motion.

"There are other deviations by staff judge advocates which cause us an unnecessary loss of manpower, such as failure to sign the pre-

trial advice or the posttrial review, or signing two reviews in the same case, each recommending a different action. But the most persistent error involves application of the forfeitures in contravention of Article 57 of the Code and paragraph 88d of the Manual. See U. S. v. Shirley, — CMR — (ACMR 24 Sep 71). It needs no great legal scholar to know how to apply the provisions of Article 57 and paragraph 88; it merely requires carefulness.

"We find unnecessary problems in records of trial which are clearly the result of lack of knowledge or lack of preparation by counsel. While almost all counsel know how to introduce an extract of a morning report, I am surprised at the number of counsel who don't have the foggiest notion of how to lay a foundation for the admission of other official records or business entries, or how to introduce in evidence the results of a laboratory test. If you have a case requiring the use of such items, I strongly urge that you check to see that your counsel knows how to introduce them properly.

"A significant factor in creating delay at the appellate level arises from our inability to serve the accused with the decision of the Court of Military Review and find out whether he wants to petition the Court of Military Appeals. Most of these cases involve accused who are AWOL or on excess leave. We are reviewing the excess leave regulations to see if we can find a way to eliminate the delays in that area. I think that the accused should be advised of his appellate rights immediately after trial; then, if he goes AWOL, we will know whether he wants counsel and can process his case promptly. It may be desirable to confer with him again after the convening authority acts, but if he is AWOL, we will at least know his desires as to counsel.

"In connection with advising the accused of his appellate rights, his trial defense counsel should advise him that a request for appellate counsel may delay disposition of his case for as much as six months to a year. While this delay may be of no consequence in some cases,

in others, such as those where the accused has negotiated a plea of guilty, and his counsel knows of no error, the accused may prefer expeditious completion of the review of his case. In a significant number of these cases, when the accused is contacted by appellate counsel, he advises that he is satisfied with his trial, that he knows of no basis for an appeal, that he would like to have the case completed as quickly as possible; that he only requested appellate counsel because he was advised "that he had nothing to lose." I feel that a defense lawyer who is not completely candid in his advice to the accused is not carrying out his duties as he should.

"The Judiciary is working on various projects aimed at simplifying and streamlining the trial and review of cases, such as rules for the trial court, a new procedural trial guide, a new form for convening orders, and a new form for general and special court-martial orders. We are already correcting court-martial orders at our level by a correcting certificate, thus avoiding the great waste of time and manpower caused by the procedure of requiring the issuance of a "corrected copy," which involved a complete re-typing of the order.

"We are also studying ways of improving the manner in which we prepare efficiency reports on our judges, as well as procedures for investigating complaints against judges for in or out-of-court conduct. To insure that the full time trial judges are employed full time, we are suggesting that they make themselves available, when time permits, not only as summary courts, but as Article 32 officers in complex cases, as hearing officers in Article 138 cases, and as legal advisors for administrative boards.

"Admittedly, I have not talked about the philosophy of military law. I have talked about the everyday errors and problems that surface during the appellate review of records of trial. While these matters may not seem important, they have a significant impact on the prestige of our system of justice. While we have a good system of justice, and have a particularly effective means of correcting errors, the reporting in appellate decisions of the kind and number of errors that I have mentioned must surely shake the confidence of those affected; at the very least, they reflect no credit on us or on the system. Accordingly, I entreat all of us to start a "zero defects" program. It not only will save manpower but it will improve the credibility of both military lawyers and military justice."

LESSONS IN MILITARY LAW

By Lieutenant Colonel David A. Fontanella, Civil Law Division, TJAGSA

Private First Class Doyle failed to make it to work on Monday morning. When he showed up on Tuesday, and after a proper warning of his rights, he explained that his car had broken down over the weekend in Center City (150 miles from post) and that it took until Monday evening to get it in working condition. Doyle's pass privilege had been suspended because of three similar occurrences in the past two months (one of which had resulted in an Article 15 reduction from E-4). The Company Commander restricted Doyle to the company area until he could decide what to do with this latest offense. On Thursday

Doyle was gone again. One of the other men in his barracks said Doyle packed a small suitcase Wednesday night and told his buddies to help themselves to his field gear as he wouldn't be needing it anymore. (Upon inventory all of his field gear was accounted for.) The company clerk dropped Doyle from the rolls as a deserter. It is now two weeks later and there has been no sign of Doyle.

Discussion

1. Assuming that a court-martial is the appropriate method of handling the situation,

can or should charges now be preferred even though Doyle is still gone?

a. Should prefer charges now, leaving termination date blank. Can always be filled in later.

b. Preferring of charges tolls the statute of limitations.

2. What offense or offenses are indicated?

a. Short AWOL on weekend (had no pass).

b. Desertion. If later evidence fails to support desertion, it can be reduced to standard AWOL.

c. Breaking restriction not appropriate (merging of major and minor offense).

3. How should the first page of DD Form 458 be filled in?

a. Information for first third of page obtained from 201 file.

b. Who should be listed as witnesses?

(1) Commander who suspended pass.

(2) Barracks mates.

c. What if some witnesses are about to depart the unit?

(1) List ETS or PCS date by name.

(2) List social security number, new unit or address or attach orders.

d. What documents should be prepared?

(1) Morning report extracts (DA Form 188).

(2) Statements of witnesses should be attached, although they need not be listed on the form.

e. Is restriction considered as "restraint"?

(1) Yes, and dates should be from date of imposition to date he went AWOL again.

(2) If he later is confined or restricted, that will be added.

4. Who normally prefers (swears to) the charges?

a. Normally the company commander, although it can be anyone subject to the UCMJ.

b. Must be preferred in the presence of a commissioned officer authorized to administer oaths (usually an adjutant).

5. How is an accused informed of charges when he is AWOL?

a. That block on the DD Form 458 is left blank. He will be informed upon his return to military control and after the AWOL termination date has been filled in on the Charge Sheets. After the accused returns to military custody, he will be informed of the charges.

6. What is the significance of the receipt of charges?

a. Puts the charges officially in the hands of the next senior commander who must take action.

b. This step stops the running of statute of limitations.

7. What comes next, since there cannot yet be a trial?

a. The Charge Sheets and all the accompanying documents should be stapled into the accused's 201 file before the file is retired from the installation.

b. When the soldier is returned to military control all the papers needed for trial are immediately available.

You have just read one problem and discussion from a new series of training materials prepared by The Judge Advocate General's School to meet the increasing need for education in military law within the military community. Introduced at the 1971 Judge Advocate General's Conference, the *Lessons in Military Law* series was written for presentation to company grade officers and NCO's by Army lawyers. (See Vol. 1, No. 4, *The Army Lawyer* 7 (November 1971)) The accompanying text, *Legal Guide for Commanders*, provides background reading for the problems and covers a wide range of criminal and civil law topics in easy-to-understand deskbook

language. Each of the eight *Lessons* in the series contains several factual situations commonly found in the military unit. Each situation is followed by questions and a discussion outline taken from the *Legal Guide for Commanders* which the Army lawyer uses to develop the *Lesson* objectives. The *Lessons* were intended for presentation to groups of 30 to 40 officers and NCO's giving each student an opportunity to discuss the problem with the instructor and to relate his own experience as a way of reinforcing the learning process. It is clear that students learn best when they participate in their own education and this is particularly important when considering the difficulty in relating abstract legal principles to the daily problems of military command. The eight *Lessons* cover not only general principles of military justice, but also preliminary investigations, search and seizure, nonjudicial punishment and the preparation and forwarding of charges. On the civil law side, the *Lessons* treat administrative elimination of enlisted men and nonpunitive disciplinary measures. Although the *Lessons* were written in conjunction with the *Legal Guide for Commanders*, it was intended that only the most

common problems be the basis for a classroom exercise. Therefore, military legal instructors might well consider reading assignments in the text which extend beyond those required to complete the *Lessons*.

The *Lessons* are currently undergoing field testing at major installations around the world. Early reports indicate that they are going over well. Suggestions have been submitted for change and these will be incorporated in a first revision of the materials.

Although the target group for this instruction was the Branch Officer Basic Course at Army service schools and at NCO academies, it is clear that they may be also used by any staff judge advocate who desires to conduct a program of education at the battalion or brigade level. The Judge Advocate General's School is interested in comments and suggestions for improvement of this series and looks forward to discussing these materials with all interested parties. If you have the opportunity, take this *Lesson* down to the 2d Battalion, 118th Infantry, and try it out over coffee with the officers and men. Let us know how you make out.

NEW CRIMINAL INVESTIGATION COMMAND DESCRIBED

During the 1971 Judge Advocate General's Conference, Colonel Henry H. Tufts, Commanding Officer, U. S. Army Criminal Investigations Command, described the organization and function of this new command. The following is a summary of his remarks:

The United States Army Criminal Investigation Command (USACIDC) is the Army's newest major command. It commenced activities on 17 September 1971. Its mission is to perform and exercise centralized command, direction and control of Army criminal investigative activities world-wide; provide CID support to all elements on a geographical basis; perform such other CID functions as may be assigned by Headquarters, Department of the Army; and make recommenda-

tions to higher and collateral echelons in regard to CID matters.

The evolution of the Criminal Investigative Command began in 1964 when a Department of Defense study concluded that inadequacies existed in the investigative service. In 1965 command and control of the investigative elements was centralized into operational groups. Another study in 1968, directed by the Chief of Staff, lead first to the establishment in 1969, of the U. S. Army CID Agency as a class II activity under the Provost Marshal General. In 1970 the Agency was placed under the Deputy Chief of Staff for personnel as a class II activity. Finally, this year, the new world-wide command was created.

Within Headquarters, USACIDC, the Office of the Commander will provide command and

control. The Commander has a judge advocate on his staff to provide in-house legal guidance. The TDA for USACIDC also calls for one judge advocate at each of the six regions. These judge advocates should relieve the local judge advocate of the burden of advising and guiding investigators. The Commander will also have an IG and an information officer.

In addition, the Command Headquarters will have a directorate staff consisting of a Director of Personnel and Administrations; Logistics; Operations; Comptroller; Investigations and Crime Records.

Subordinate to the Command Headquarters will be six regions, comparable to present CID groups. Subordinate to the regions will be several field offices similar to the present detachments. The field offices may have several resident agencies attached to them.

The region headquarters will be similar in organization to the Command Headquarters. The Field Offices will do a minimum of administration, concentrating on investigation. The resident agencies will not be administratively self sufficient.

TRANSFER OF MILITARY PERSONNEL

By Litigation Division, OTJAG

The recent decision of the Circuit Court of Appeals for the Second Circuit in *Cortright v. Resor*, — F. 2d — (2d Cir., decided 20 Aug 1971) deals with a problem which is critical to the military establishment and should be carefully read by all judge advocates.

The somewhat complex facts in *Cortright* are set forth in the opinion of the Second Circuit and, perhaps with a slight variation, in the opinion of the lower court (see 325 F. Supp. 797 (E.D. N.Y., 1971)). In sum, some members of the 26th Army Band at Fort Wadsworth had signed an advertisement in the New York Times in November, 1969, urging withdrawal from Vietnam. In the spring of 1970, Specialist Cortright began to circulate a new petition on behalf of an off-post organization. There was opposition to the petition by some Band members and discussions among the members of the Band. At the same time the new commander of the Band became dissatisfied with the general state of discipline and conduct within the Band and, apparently on his own, advised members against signing the petition. There was some polarization of the Band with Cortright leading one faction. On 4 July 1970, four wives of Band members, and Cortright's fiancée, interjected themselves into a parade at which the Band was playing on Staten Island and insisted on marching

along with anti-war posters. The crowd reacted unfavorably, and the incident received wide local press coverage. The ladies had acted with the apparent approval, and perhaps active support, of their husbands and Cortright.

Faced with what he regarded as a generally seriously deteriorating disciplinary situation, CW3 Flores, the commander of the Band, announced, with the concurrence of the Commanding General, Fort Hamilton, some ten changes in the Band's routine which substantially reduced the special privileges of its members and placed them in the same position as all of the other soldiers at the Fort Hamilton Complex (which included Fort Wadsworth). The changes were subsequently explained to the Band and they were assured they were not being punished and had the right to express their opinions. Thereafter, the Chief of Staff, First U. S. Army, ordered Cortright's transfer because he believed upon the basis of information from, and the recommendations of the Commanding General, Fort Hamilton, that it was necessary to alleviate the undesirable disciplinary situation in the band. Later, some other routine transfers were also made.

Cortright, and others, initiated a complaint pursuant to Article 138 of the Code, and after

extensive investigation their assertions of impropriety were rejected. They thereafter turned to the courts and after an initial partial success in the district court their suit was dismissed by the Second Circuit.

The thrust of the Second Circuit's opinion is that the constitutional rights of soldiers are narrower than those of civilians and that, based on *Orloff v. Willoughby*, 345 U.S. 83 (1953) it would not interfere with military transfer orders or other internal disciplinary matters except in the most unusual circumstances. The facts of this case, coupled with the good faith belief that corrective action was necessary, did not justify any intervention.

Undoubtedly, *Cortright* deals with the most difficult issue the Army must resolve; the line between the soldier's legitimate expression of his personal views and the maintenance of discipline, and what to do when they become inextricably mixed. The opinion is important because it seems to say that the soldier has no First Amendment right to comment or act in a manner which threatens the military mission or discipline, even though such words or actions would be protected if he were a civilian. Further, the court obviously placed great

reliance upon the subjective evaluations of the commanders involved. The district court was more reluctant to do so, and it may be recalled that the Seventh Circuit in *Kiiskila v. Nichols* 433 F. 2d 745 (7th Cir, 1970) specifically rejected subjective views in favor of more objective evidence. The latter is more difficult to develop and, as a practical matter, probably requires a commander to wait until the disciplinary problem he is addressing has deteriorated beyond redemption.

At the same time, however, *Cortright* does not give commanders *carte blanche*. The court specifically rejected the argument that the issues presented were beyond judicial review and reserved to itself the right to intervene when necessary. Another court, or the same court, is free to limit this decision, or modify it. It is apparent from the opinion, and the record, that a serious situation in fact existed in the Band. Thus, *Cortright* does not provide the easy way for dealing with every unpopular soldier, and every troublesome situation, imagined or real. It should be applied conservatively and limited to situations where a commander really believes that he is facing a serious disciplinary threat and is ready to so testify in a Federal court when called.

REPORT FROM THE U.S. ARMY JUDICIARY

Statistics

SEPTEMBER WORKLOADS

	On Hand	Received	Disposed of	Pend- ing
Review—Art 66				
GCM	779	220	203	796
SPCM	384	120	116	388
	1163	340	319	1184
Examination—				
Art 69	18	43	46	15
Total	1181	383	365	1199

Results of Cases Disposed of by:

Court of Military Review

Findings and sentence affirmed	245
Findings affirmed, sentence modified	50

Findings partially disapproved, sentence affirmed	3
Findings and sentence affirmed in part, disapproved in part	9
Findings and sentence disapproved, rehearing ordered	4
Findings and sentence disapproved, charges dismissed	5
Returned to field for new SJA Review—C/A action	3
	319

Examination and New Trials Division

Legally sufficient or noted	38
Referred to Court of Military Review	8
	46
TOTAL	365

Pleas and Counsel in Cases Reviewed:

	<i>Counsel G. Plea</i>	<i>Counsel N.G. Plea</i>	<i>No Counsel G. Plea</i>	<i>No Counsel N.G. Plea</i>	<i>Total</i>
Art 66	85	85	102	47	319
Art 69	—	—	10	36	46
	85	85	112	83	365

Actions by United States Court of Military Appeals
Petitions Filed by Accused:

<i>On Hand</i>	<i>Fwd to COMA</i>	<i>Granted</i>	<i>Denied</i>	<i>On Hand</i>
44	505	66	421	54*

Decisions of COMA on Petitions Granted:

<i>On Hand</i>	<i>Granted</i>	<i>Affirmed</i>	<i>Reversed</i>	<i>On Hand</i>
27	62**	37	35	17

Cases Certified by The Judge Advocate General:

<i>On Hand</i>	<i>Fwd to COMA</i>	<i>Affirmed</i>	<i>Reversed</i>	<i>On Hand</i>
0	11	2	3	6

* 6 petitions withdrawn, 4 cases remanded to COMR on Motion after petition, and 1 Motion to Strike Petition granted.

** 1 Grant withdrawn.

Recurring Errors and Irregularities

Far too frequently Government counsel attempt to comply with the service of charges requirements of Article 35, Uniform Code of Military Justice, by utilizing "substituted service" upon the defense counsel. Despite the fact that "substituted service" may be a more convenient mode of service, the Court of Military Appeals has recently voiced its displeasure with this procedure by noting that "... there is no provision of the Uniform Code or of the Manual for Courts-Martial permitting 'substituted service', and innovations so clearly in conflict with Article 35 should not be indulged and should not be countenanced by the administrators of military justice in the field." In an effort to avoid needless litigation of issues, Government counsel are strongly urged to adhere strictly to the provisions of Article 35. In this connection attention is invited to paragraph 45 *h*, MCM,

1969 (Rev.) which provides that "[i]mmediately upon receipt of charges referred to him for trial he [trial counsel] will serve a copy of the charge sheet, as received and corrected by him, on the accused and will inform the defense counsel that the copy has been so served."

Administrative Actions

a. Staff Judge Advocates of each command having general court-martial jurisdiction are reminded that the JAG-2 report for the period 1 October-31 December 1971 should be forwarded not later than seven working days after the close of that calendar quarter. See Chapter X, AR 27-10. Many arithmetical errors in past reports have been noted. Greater accuracy is urged. Also, the reports should be mailed to HQDA (JAAJ-CC), Nassif Building, Falls Church, Virginia 22041.

b. Staff Judge Advocates of commands concerned are reminded that the report (RCS DD-M(SA) 1061), for the period 1 July-31 December 1971, on the number of military personnel convicted of felonies in U. S. Federal and State Courts, is due by 5 February 1972. See HQDA letter, dated 30 June 1971, subject: Statistical Report of Criminal Activity and Disciplinary Infractions in Armed Forces. The reporting requirement is primarily applicable to U. S. Army, Pacific (as to Hawaii); U. S. Continental Army Command; U. S. Army Material Command; U. S. Army Strategic Communications Command; U. S. Army Security Agency; U. S. Army Intelligence Command; U. S. Army Air Defense Command; U. S. Army Recruiting Command; U. S. Army Criminal Investigations Command; U. S. Army Alaska; U. S. Army Forces Southern Command (as to the Canal Zone); Military Traffic Management and Terminal Service; U. S. Military Academy; U. S. Army Military District of Washington; The Surgeon General; and Chief of Engineers. The reports should be mailed to HQDA (JAAJ-CC), Nassif Building, Falls Church, Virginia 22041.

c. During the month of October 1971, the Army Court of Military Review issued Court-

Martial Correcting Certificates for the following type errors found in initial promulgating orders:

(1) Failure of GCMO Number 103, Headquarters U. S. Army Field Artillery Center and Fort Sill, dated 10 September 1971, to show "no previous convictions considered," rather than one.

(2) The accused's name where it first appeared on GCMO Number 202, Headquarters U. S. Army Training Center, Infantry and Fort Lewis, dated 2 October 1970, was misspelled.

(3) The date of the convening authority's action in GCMO Number 1, Headquar-

ters VII Corps, dated 6 January 1971, was shown as "6 January 1970" rather than "6 January 1971".

(4) Failure of GCMO Number 28, Headquarters 1st Armored Division, dated 28 October 1970, to show that the sentence was adjudged by a military judge.

(5) Failure of GCMO Number 14, Headquarters 8th Infantry Division, dated 6 April 1971, to show the date of the convening authority's action.

(6) The date of the convening authority's action in GCMO Number 9, Headquarters I Field Force Vietnam, dated 18 February 1971, was shown as "18 February 1970" rather than "18 February 1971".

MEDICAL CARE RECOVERY FROM WORKMEN'S COMPENSATION CONTINUED

By The Litigation Division, OTJAG

This is the second of three articles examining ways of recovering medical expenses without reliance on the Federal Medical Care Recovery Act. While, as discussed below, recoveries for the expense of medical treatment furnished at military hospitals in workmen's compensation cases are clearly allowable under individual state law in most state jurisdictions, authority for the same at the Federal level is still in a formative state, and there are no cases directly in point. A review of some general law, both state and federal, relating to medical recoveries and the background thereof will be of some assistance.

During World War II administrative recoveries for medical services rendered were being effected in tort cases until the case of *United States v. Standard Oil Company*, 332 U.S. 301, 91 L. Ed. 2067, 67 S. Ct. 1604 (1947). This decision held that the area was one of federal fiscal policy, and that, in the absence of federal legislation authorizing such collections, recovery was denied to the United States. Eventually, in 1962, Congress did pass the Federal Medical Care Recovery Act (42 U.S.C.A. §2651 et seq.). Since this statute is

limited to "circumstances creating a tort liability upon some third person" it has little applicability to workmen's compensation cases, unless some third party tortfeasor other than the employer, is involved. In the event such a third party is liable, it is probably preferable to proceed against the third party under the Federal Medical Care Recovery Act since authority to effect such recovery is clearly spelled out under the Federal Medical Care Recovery Act. Also, the scope of recovery is broader since there exists no prerequisites to recovery such as emergency, placing the employer on notice, refusal of treatment by the employer, etc., as are required in compensation cases.

Recovery for the expense of medical treatment rendered at Veteran Administration hospitals is also being allowed in cases involving the uninsured motorist provisions of insurance policies (*United States v. Government Employees Insurance Co.*, 440 F. 2d 1338 (5th Cir. 1971); *United States v. United Services Automobile Association*, 431 F. 2d 735 (5th Cir. 1970), *cert. den.*, 400 U.S. 992 (1971). Such recoveries can hardly rest on the Federal Medical Care Recovery Act since the act cre-

ates "a right to recover from said third person" and neither the injured party nor his insurance carrier fit this category. It has been variously stated that liability is predicated on a third party beneficiary theory, that the Government was an insured, or that the decision rests on the express language of the policy. (See also *Government Employees Insurance Co. v. United States of America*, 376 F. 2d 836 (4th Cir. 1967). While not squarely in point these cases are somewhat analogous to, and create a favorable climate for, recovery in workmen's compensation cases since workmen's compensation systems generally involve insurance, as to which injured workers and those who treat them are third party beneficiaries.

According to Larson (*Larson, The Law of Workmen's Compensation*, Vol. 2, Para. 61.12), as to the question of whether services performed by a public institution must be paid for in compensation cases, New York has held that a Veterans Administration Hospital is not to be reimbursed while North Carolina has held the opposite. Such cases are also not squarely in point since it is frequently stated that under the provisions of 38 U.S.C. 610(a)-(1) the Veterans Administration has specific authority to prescribe regulations governing the furnishing of hospital benefits. Pursuant to such authority the Veterans Administration has enacted rules providing for reimbursement under workmen's compensation when the patient gives an assignment. (— 38 — C.F.R. 17.48(d) —). However, a brief analysis of the two cases cited by Larson is of some assistance. In *Marshall v. Robert's Poultry Ranch*, 150 S.E. 2d 423, (N. C. 1966), the employee-veteran suffered an accident on the job and required immediate medical attention which the employer, having notice, did not provide. Being unable to pay for the same the employee obtained treatment from the Veterans Administration. The Administrator of Veterans Claims filed a lien with the Industrial Commission which approved the bill. In upholding the approval the court noted that while Congress intended to provide free medical treatment for indigent servicemen it

did not intend to relieve the employer of his statutory obligation to provide medical treatment for his employees. This reasoning is certainly applicable to military cases. Whether Congress had it in mind to provide treatment as a reward for past services, or to insure prompt adequate treatment and maximum recovery for those presently serving on active duty or their dependents, it could hardly have had an intent to relieve other persons legally responsible from their liability for providing treatment. It is pointed out that the injured party in a compensation case is not seeking damages in the usual sense but is rather entitled by the statute to certain rather specific benefits including medical treatment.

The second case (*Atkins v. DeBree*, 265 N.Y. S. 2d 307 (1965)) denies recovery but is easily distinguishable since the New York law gave the employer the right to furnish treatment in the first instance and he had not neglected or refused to do so. Additionally, New York law specifically provided that hospitals supported by public taxation could treat only in emergency cases, and this was not an emergency. Reference therein to the case of *United States v. St. Paul Mercury Indemnity Co.*, 238 F. 2d 594 (8th Cir. 1956), wherein it was held that the Veterans Administration was not entitled to recover because the insurance policy of a Veteran hospitalized by polio covered "only expenses actually incurred by him" is not only primarily dicta (since there was obviously no liability under the state law) but also an instance of reliance on a case of doubtful legal reasoning. To place such emphasis on the words "actually incurred by him" ignores the obvious fact that the medical expenses were incurred by the Government for him. In cases of this type the theory of third party beneficiary should be properly presented to overcome this limited reasoning.

In addition to those cases cited by Larson, a number of other state courts have also dealt with this problem. In *Higley v. Schlessman*, 292 P. 2d 411, (Okla. 1956), the employer was on notice and failed to provide benefits. It was held that the Veterans Administration was

authorized, by notice of Claim on file, to make a reasonable charge for such service, and to have the charge allowed by the States Industrial Commission to the same extent as any other private hospital or physician. In *Brauer v. White Concrete Co.* and *Buck v. O'Dea Chevrolet Co.*, 115 N.W. 2d 202 (Iowa 1962), the Iowa Industrial Commission was held to have jurisdiction to allow claims of a VA hospital against the employers and their insurance carrier. *Stafford v. Patco Products Inc. and United States of America, Intervenor*, 147 A. 2d 286 (N. J. 1958), holds that when the employer neglects or refuses treatment and the injured veteran obtains treatment without charge from the government, the government is entitled to reimbursement. The Pennsylvania case of *Henry v. Lit Brothers*, 165 A. 2d 406 (Pa. 1960), is an interesting factual case, illustrating the broad scope of workmen's compensation. The employee-veteran was injured while playing touch football on the lunch hour. The employer denied injury arising-out-of and occurring in-the-course-of the employment and failed to furnish treatment. The injury was found compensable and the VA lien for such treatment allowed.

The foregoing cases illustrate the State Courts generally look with favor, once liability for self procured treatment is established, on recovery of the cost of such medical treatment by the person who provided it.

To the contrary is the federal case of *Pennsylvania National Mutual Casualty Co. v. Barnett and United States of America*, 445 F. 2d 573 (5th Cir. 1971), concerning an injury on the job in Texas, which not only found that the VA's right to recover was precluded by their failure to procur an assignment pursuant to their own rules but also that the Federal Medical Care Recovery Act could not apply as it is limited to tort claims.

Quite obviously, in spite of the favorable state decisions, and considering that the armed services have neither administrative regulations nor a special statute on which to predicate a recovery in these cases, there is a chance that an adverse decision may be obtained whenever the issue of recovery by a military service in a Compensation case is carried to the federal appellate courts. The next article will provide general guidelines to be followed in presenting medical recovery claims under workmen's compensation laws.

CLAIMS ITEMS

By the U. S. Army Claims Service

1. Abandoned or Withdrawn Claims.

A substantial number of personnel claims forwarded to the U.S. Army Claims Service in accordance with paragraph 2-43b, AR 27-20, contain no written evidence of claimant's intention to withdraw or abandon his claim, such as a letter from the claimant or a memorandum for record of a telephone conversation with the claimant. In any event, some written document evidencing the basis for treating the claim as abandoned must be in the file. Before *abandoned* claims are forwarded to the U.S. Army Claims Service, an attempt should be made to communicate with the claimant by registered or certified mail, *return receipt requested*, asking him to advise of his

intentions within a specified period, usually 30 days. If the receipt is returned indicating delivery of the letter, and then no reply is received, the file may be closed and forwarded to the U.S. Army Claims Service. If correspondence to claimant is returned undelivered, a current address usually can be obtained from the Active Army Locator (Worldwide), Fort George G. Meade, Maryland, Autovon 923-4768. Written requests may be addressed to the Commanding General, First United States Army, Fort George G. Meade, Maryland 20755, ATTN: AHAAG-BAC, for addresses of active Army personnel, or to the U.S. Army Administration Center, TAGO, 9700 Page Boulevard, St. Louis, Missouri 63132, for the address of a former member.

Some files are received which contain no claim form. Once a claim is filed it becomes a permanent record of the Department of the Army and must be treated as such. It is essential that at least one copy of the executed claim form be retained in the file at all times. In personnel claims a copy of both DA Form 1089 and DA Form 1089-1 must be retained. If a claim is withdrawn the original claim form and supporting documents may upon request be returned to the claimant after copies thereof for record purposes have been made.

2. Thefts From Household Goods Shipments.

The Federal Bureau of Investigation has investigative jurisdiction over the Federal laws relating to thefts of property and valuables involved in interstate commerce.

The tracing of ordinary items of household goods which are stolen is quite difficult and in most cases impossible. The Federal Bureau of Investigation has, however, been quite successful in recovering items bearing serial numbers or other distinguishing marks of identification, and requests that thefts of such items while involved in interstate or foreign shipments be promptly reported to the nearest FBI office. Claims personnel are urged to comply with this request.

A pamphlet published by the FBI entitled "Combating Thefts From Shipments" should be available at local offices of the FBI.

3. Motor Vehicle Losses (Chapter 11, AR 27-20).

Change 2, AR 27-20, 3 November 1971, reads as follows:

Page 11-4. Subparagraph 11-4f(4) is added:

(4) Located elsewhere on a military installation, provided that the loss or damage is caused by fire, flood, hurricane, or other unusual occurrence or by theft or vandalism. The term "military installation" is used broadly to describe any fixed land area, wherever situated, controlled and used by

military activities or the Department of Defense. For purposes of this subparagraph, "motor vehicles" includes utility trailers, camping trailers, boats and boat trailers.

This change extends coverage under the Military Personnel and Civilian Employees' Claims Act to motor vehicles when parked anywhere on a military installation. Prior to this change coverage was limited to vehicles parked at quarters.

This change has an effective date of 3 November 1971 and is applicable to all unsettled claims.

4. Revised Allowance List — Depreciation Guide.

A revised Table of Allowances and Depreciation Guide is being prepared for issuance by the U.S. Army Claims Service for use by claims approving and settlement authorities in connection with claims processed under Chapter 11, AR 27-20. The new table results from consultations between claims representatives of all the Services and will assure inter-Service uniformity of application of maximums allowable and rates of depreciation. Dissemination of the new guide is expected to take place within the next 30 days.

The revised guide will include a discussion section, to include cross-referencing of items, a standardization of abbreviations to be used by adjudicators, and miscellaneous notes to provide greater explanation of rules in certain troublesome areas such as determining antique value, internal damage to appliances where no external damage to the container is present, and reupholstering.

A number of maximum allowances have been liberalized. For example, the maximum awards possible for books has been increased from \$1,000 to \$1,500 per claim; hobbies or collections from \$500 to \$750 per hobby and \$1,500 for a combination of collections or a collection belonging to the entire family; furs from \$500 to \$750 per item with a maximum of \$1,500 per claim; and silverware from \$1,000 to \$2,000 per claim.

The views of field claims approving and settlement authorities are solicited regarding recommendations for possible future changes in the tables. Any such recommendations

should be submitted to the Chief, Personnel Claims Division, U.S. Army Claims Service, OTJAG, Fort George G. Meade, Maryland 20755.

LEGAL ASSISTANCE ITEMS

By The Legal Assistance Division, OTJAG

1. FEDERAL TAXATION — *The application of nonrecognition treatment under section 1034 to the proceeds of a sale of a previously rented residence.* A situation commonly encountered by legal assistance officers involves a member who has purchased a home at a prior duty station, upon change of station has rented the home, and without returning to live in the home, sells it. Generally, he will have taken depreciation on it during the period of rental. Section 1034 provides that a member will not recognize the gain on the sale of his principal residence if within the period of one year before the sale through four years after the sale, he purchases a new principal residence. The Internal Revenue Service has taken the position that the proceeds of the sale of such property do not qualify for nonrecognition treatment because the property is not the principal residence of the taxpayer, citing in support of that conclusion the fact that under section 167, depreciation is only possible with respect to property "held for the production of income", and that actual occupancy is generally necessary to a determination that property is the "principal residence". Recently, in *Arthur R. Berry*, TC Memo 1971-179, 30 TCM 757 (1971) the Tax Court rejected both of these positions and held that a residence purchased by an Army officer in 1955 in Maryland remained his principal residence until it was sold in 1966 even though he did not occupy it from 1960 to 1966 because of his service assignments, rented it during that period, and claimed depreciation and maintenance expenses on it. The court concluded that depreciation deductions are not necessarily inconsistent with principal resident status and that on the particular facts involved in *Berry*, the property remained the

officer's principal residence during his absence. Compare *Richard T. Houlette*, 48 TC 350- (1967) and *Ralph L. Trisko*, 29 TC 515- (1957).

2. PENNSYLVANIA STATE INCOME TAXES. Pennsylvania has recently passed a new personal income tax which is effective 1 June 1971, and replaces the previous income tax enacted on March 4, which had been declared unconstitutional by the Pennsylvania Supreme Court. The tax is a flat rate tax of 2.3% without exemption or deduction imposed upon eight classes of income; compensation, net income from business or profession, net gains from the sale of property, rental and royalty income, dividends, interest from obligations not exempt under U.S. or Pennsylvania law, gambling winnings, and net income from trusts and estates. It applies to all income in the above classes received by resident individuals and all such income received by nonresident individuals from sources within Pennsylvania. Credit will be allowed for any income tax imposed by another state on income also subject to Pennsylvania tax, limited to that proportion of the Pennsylvania tax that the income subject to tax by the other state bears to the taxpayer's entire taxable income. Credit will also be given for amounts withheld under Pennsylvania's previous unconstitutional income tax statute.

The Pennsylvania Code adopts the New York definition of the term "resident" which has the effect of exempting many Pennsylvania domiciliaries who are absent from the state most of the year. A domiciliary who is not present in Pennsylvania for more than an aggregate of thirty (30) days who does not maintain a permanent place of abode in Penn-

sylvania, and who does maintain a permanent place of abode outside of Pennsylvania is taxed as a nonresident. However, the Pennsylvania Department of Revenue takes the position that a Pennsylvania domiciliary who is a member of the armed forces and who is living in government quarters in another state does not "maintain a permanent place of abode outside of the state". Accordingly, such an individual will be regarded as subject to the Pennsylvania income tax. It should be noted that this

position is not without its difficulties, and a similar position of the New York Department of Revenue is currently being litigated.

Declarations and payments of estimated tax are required where the income not subject to withholding can reasonably be expected to exceed a thousand (1,000) dollars, and the annual tax returns are due on the fifteenth (15th) day of the fourth (4th) month after the close of the taxable year, which is April 15th for most taxpayers.

CHAPTER 10 DISCHARGES

PREVENTIVE MAINTENANCE

By CPT Norman Goldberg, Military Personnel Law Team, Administrative Law Division, OTJAG

By Army Regulation 635-200, 15 July 1966, an individual whose conduct has rendered him triable by court-martial under circumstances which could lead to a bad conduct or dishonorable discharge may submit a request for discharge for the good of the service. This request for discharge does not preclude or suspend disciplinary proceedings in a case and vests the determination whether to try the member by court-martial or accept his or her request for administrative discharge in the commander exercising general courts-martial jurisdiction.

Recently, concern has been expressed that an individual may request an administrative discharge for the good of the service, receive an undesirable discharge, wait a suitable length of time and then seek a recharacterization of the discharge before the Army Discharge Review Board or the Army Board for the Correction of Military Records. If a discharge for the good of the service is to be attacked, after the fact, the probable basis will be that the enlisted member was coerced into submitting the request for discharge, without full knowledge of his procedural rights, of elements of the offense or offenses he is alleged to have committed, and of the possible defenses available to those charges.

The cited regulation specifically requires that commanders insure that there is no element of coercion placed upon an individual in submitting a request for discharge for the good of the service. Accordingly, the most profitable area to explore in order to prevent future collateral attacks is the documentation necessary to assure that the service member made a knowing, intelligent decision when he requested a discharge for the good of the service. As a solution to this problem, some staff judge advocates are requiring the service member who requests a discharge under the provisions of Chapter 10 to submit a statement in his own handwriting that he has not been subjected to any form of coercion, that he is not interested in undergoing any type of rehabilitation or transfer to another unit; and that he understands the losses he may suffer because of his request for discharge. Other staff judge advocates are including in the file with the request for discharge statements from officers, noncommissioned officers and peers of the individual submitting the request for discharge which comment on his lack of potential for rehabilitation. While neither of these actions are required by Army Regulation 635-200, it does appear to be a practical approach to the problem and is recommended for consideration by all judge advocates. What

the regulation does require is that the individual unequivocally state that he has not been subjected to coercive tactics in submitting his request for discharge. In addition, subparagraph 10-3c, Army Regulation 635-200, requires that extensive documentation accompany the service member's request for discharge. All members of the Judge Advocate General's Corps should be aware of these requirements and insure that they are followed.

The Judge Advocate General has recently proposed a change to the regulation by which the service member who requests a discharge will acknowledge that he was advised by a military lawyer of his procedural rights under

the Uniform Code of Military Justice, of the elements of the offense with which he is charged, and of possible defenses to those allegations. When this change is promulgated, the record will contain positive recitations by the service member that no coercion was exerted upon him and that he submitted his request only after receiving full advice of counsel.

A Chapter 10 discharge is a useful tool. However, care must be exercised to insure that its use does not infringe on the rights of the accused or the Government. Strict adherence to the anti-coercion provisions of the regulation should go far in preventing future collateral attacks.

INFORMATION FOR COMMANDERS

From time to time, The Judge Advocate General furnishes information on military law through various media for use by commanders. Those items of significance will be published in *The Army Lawyer* so that judge advocates will be aware of the information reaching their commanders.

The following are the first two such items:

Change 8 To Army Regulation 27-10—Authorization For Military Judges To Issue Search Warrants.

Change 8 to Army Regulation 27-10, which will become effective on 15 December 1971, authorizes military judges assigned to the U. S. Army Judiciary to issue warrants authorizing searches and seizures. This authority is in addition to the authority now possessed by commanders to authorize searches and in no way derogates from it. The purpose of this new authority to authorize searches and seizures is to provide the Army with a method whereby a trained legal officer may determine if grounds justifying a search exist and to authorize the search if he finds such grounds. Illegal searches have become a problem in the Army. They have resulted in criminal cases which will not stand up at trial. It is

believed that a trained legal officer is in the best position to determine if a search may legally be made. A search authorized by a military judge should have a greater probability of withstanding legal challenge and commanders should be encouraged to make use of this new procedure.

Authorizing military judges to issue search warrants is regarded as a worthwhile experiment. One year after the effective date of the change to the regulation, the innovation will be reviewed to determine if it has contributed to better administration of justice. The views of senior commanders and staff officers will be solicited at that time.

MILITARY JUSTICE

1. Problems associated with the complexity of the administration of military justice have been the subject of considerable study. These studies reveal that:

- a. Certain aspects of military justice are unavoidably complex.
- b. Many junior officers and senior noncommissioned officers are not sufficiently familiar with the details of the system to understand and use it to full effectiveness.

c. A number of procedural and administrative changes can be made to improve the efficiency of the system.

2. The urgent need to maintain and, wherever possible, to enhance discipline requires that commanders at all levels make every effort to improve the operation of the military justice system in the field. Commanders should especially emphasize:

a. Insuring that subordinate commanders develop adequate knowledge of and familiarity with the military justice system. Toward this end, The Judge Advocate General's School has written and distributed on a limited basis for field test two publications, *A Desk Book for the Special Court-Martial Convening Authority* and *A Legal Guide for Commanders*. It is planned that final revision and world-wide distribution should be achieved by end FY 72.

b. Insuring that subordinate commanders consult with their legal staffs before taking any actions having legal ramifications. In this regard, commanders are entitled to, and should expect, the full support of their legal staffs. Wherever feasible, each commander, down to at least the battalion level, should be advised of a specific lawyer to whom he can turn for advice.

3. The military lawyer, too, has an especially difficult task to perform. He is charged not only with supervising the administration of military justice within the command, but also with safeguarding the rights of the individual within the special requirements and relationships of the Service. To do this effectively, each judge advocate is obligated to become knowledgeable of the special problems confronting the commander in his efforts to uphold and improve the effectiveness, morale, and discipline of his unit.

4. Concerning the actual administration of military justice, a number of problem areas have been isolated and a comprehensive program to reduce them is being developed:

a. Proposals presently under study include:

(1) Establishment of legal centers,

where feasible, to increase efficiency and reduce delays in processing cases.

(2) Establishment of a legal clerks' school to provide trained personnel to assist in the processing of military justice matters at the battalion level.

(8) Procurement and retention of trained court reporters.

(4) Promulgation of new rules of court, primarily aimed at reducing delays.

(5) Elimination of the requirement for verbatim transcripts in guilty plea cases.

b. Projects that are currently being implemented include:

(1) Review of Article 15 forms and procedures, with a view of simplifying both.

(2) Preparation of a new handbook to assist nonlegal personnel engaged in performing minor duties of a legal nature.

(3) Preparation of specific instructions and forms to assist commanders in search and seizure cases.

c. New programs that have recently been implemented:

(1) A military magistrate program in U.S. Army, Europe, to reduce excessive pre-trial confinement.

(2) Changes in Article 15 procedures which insure the right of an accused to consult with a judge advocate, and to discuss personally the allegations of misconduct with the officer who intends to impose punishment.

(3) Increased training for military judges in all aspects of their judicial functions and an increase in the already high standards set for their selection and appointment.

d. Legislation that has been proposed by Headquarters, Department of the Army, includes:

(1) Permitting the convening authority to order the execution of the confinement portion of a sentence, thereby eliminating meaningless prisoner classifications.

(2) Authorizing certain legal officers to perform some of the post-trial legal actions now accomplished by the convening authority.

(3) Broadening the prosecution's right to appeal rulings.

5. The accomplishment of some or all of the actions set out above will go far to reduce

delays, improve administration, and, in general, improve the entire military justice system. However, while acknowledging that such improvements are highly desirable, it is important that senior commanders emphasize to both military and civilian audiences whenever possible that the present system is workable and is an indispensable institution of the Armed Forces.

PRESIDENTIAL AND CONGRESSIONAL INQUIRIES

From Military Justice Division, OTJAG

The Military Justice Division, Office of The Judge Advocate General, receives numerous Presidential, Congressional, and other inquiries concerning the status of soldiers facing punitive action under the Uniform Code of Military Justice.

In order to respond to those inquiries, requests for information about the status of the case of each soldier who is the subject of such an inquiry must be requested from the appropriate unit in the field.

It is essential that complete information concerning the present status of each subject soldier's case and the prior record of each subject soldier be provided by units in the field so that a complete and responsive reply may be furnished to each inquiry by the Military Justice Division.

Complete information concerning the present status of each case should include, if applicable, present status of the soldier (i.e. pre-trial confinement, restriction, or duty status), the charges and specifications and nature of each specification or a summary thereof, date charges were preferred, date Article 32 investigation began, date Article 32 investigation was completed, date charges were referred for trial, title of the convening authority, date or

dates of trial, pleas, findings, sentence, action of the convening authority and date of action, and finally, date record of trial was reviewed by a judge advocate and results of review or date the record of trial was sent to the United States Army Judiciary.

Also, please provide complete information concerning previous convictions, both civilian and military, and punishment imposed under the provisions of Article 15 as to each subject soldier. Information on prior courts-martial should include date of court-martial, number and nature of charges and specifications of which convicted, sentence, date and nature of action by convening authority, and date and nature of action by reviewing authority. Information on prior incidents of punishment under Article 15 should include date of punishment, nature of offenses, type of punishment, and action on appeal, if any.

Finally, it is very important that information with which to respond to specific matters raised in the inquiry be provided (a copy of the inquiry is sent to the field). For example, complaints that subject soldier is not being visited by his defense counsel, that subject soldier is being confined in a "tin box," or that subject soldier's alibi witnesses are not being interviewed, should be answered in the response to the request for information.

PROCUREMENT LEGAL SERVICE

By The Procurement Law Division, TJAGSA

1. Requirements Contracts. Lack of good faith in establishing estimated requirements and misrepresentation of the accuracy of the estimate entitles the contractor to damages. Comp. Gen. Ms B-173356, 9/27/71.

The procurement agency in establishing the estimates for a requirements contract for the delivery of ice cream and frozen desserts derived its estimates for a six month period from the immediately preceding nine month contract for the same items. During the previous contract the procuring agency had purchased only 36% of the original estimate. In the existing contract, the Government had purchased only 6,444 gallons of the estimated quantity of 70,000 gallons of bulk ice cream; and it was anticipated that the total purchases of this major contract item would not greatly exceed 20% of the total estimated quantity of 70,000 gallons.

While restating the general rule that relief will not be granted in cases where hardship is caused by a substantial deviation from the estimated quantities, the Comp. Gen. also stated that it is necessary that the estimate utilized in the contract be based on the best available information. Failure to base the estimate on the best available information is such a lack of good faith which would entitle the contractor to relief. Examining the record, the Comp. Gen. found that the mere carrying over of the previous nine month estimate to the present contract without any regard to the actual past ordering experience indicated that the agency had made no *bona fide* attempt to determine what the actual needs should be. Accordingly the contractor was entitled to damages.

COMMENT: This case illustrates another problem encountered in the utilization of requirements contracts and reinforces the need for careful review by the procurement legal adviser. For a different application of the good faith rule in requirements contracts see: 1 Army Lawyer 15 ¶3.

2. Bidder Responsibility. Finding that the low bidder may perform the contract at a loss affects the question of responsibility not responsiveness. Comp. Gen. Ms B-173276.

X, the low bidder, on a contract for custodial services was more than \$1,900.00 below the minimum labor costs and payroll taxes estimated by the procurement activity. Upon request the bidder confirmed the bid price and affirmatively acknowledged the manning requirements for the contract. Stating that there was no legal basis to declare the low bidder nonresponsive to the terms of the IFB, the Comp. Gen. found that the responsibility of the bidder could be questioned. In the opinion of the Comp. Gen. the bidder had the choice of three options: (1) absorb the loss; (2) supply fewer workers than the IFB required; (3) pay less than the required and prevailing minimum wages. If the contractor complied with the worker and wage requirements, a portion of the contract would be performed at a deficit and could have a clear impact on the ability of the bidder to successfully complete the contract. Stating that the record did not disclose whether the contracting officer had made a determination of responsibility, the Comp. Gen. returned the file for such action and advised that:

In the event X is determined to be responsible, we do not believe that firm can be legally denied the contract merely because performance in accordance with the contract terms will result in a financial loss to the contractor.

COMMENT: As there are many valid reasons for a contractor to accept a contract to be performed at a loss, the procuring activity should be primarily concerned with the issue of responsibility, i.e., financial capability to complete the contract. In addition, the contracting officer should be aware of the dangers inherent in the practice of "buying in." "Buying in" occurs when the contractor obtains a contract by offering a price less than the esti-

mated cost with the expectation of recovering his losses by either (1) increasing the contract price during performance through change orders, or (2) receiving "follow on" contracts at prices high enough to cover the loss sustained on the "buy in." While this practice is not favored, ASPR 1-311, the Comp. Gen. has consistently held that there is no legal rule prohibiting the Government from accepting a "buy in" proposal. Comp. Gen. Ms B-163828, 6/18/68. However, care must be exercised to prevent the contractor from recovering, through subsequent overpricing, any initial losses.

3. Set-asides. Contract awarded to a company on a total set-aside for small business firms may be terminated if the company is subsequently determined not to qualify as a small business. Comp. Gen. Ms B-173194 9/22/71.

Subsequent to the opening of bids on a total set-aside contract for janitorial services, the status of X, the low bidder, as a small business was questioned by Y, the next low bidder. Pending a determination from the SBA Regional Office, the contracting officer extended the expiration date of the existing contract. After the Regional Office ruled that X did qualify as a small business, Y indicated an intention of appealing this determination to the SBA Size Appeals Board, the contracting officer determined it was necessary to award the contract without further delay to X. Over two months later the Size Appeals Board determined that X was not a small business. Based on this finding the procuring activity administratively decided it would be in the best interest of the Government to cancel the contract with X and award the contract to Y.

X protested this decision, contending that it had a valid contract entered into in good faith. The Comp. Gen. held that in such circumstances the contract was voidable at the option of the Government. Even though the rule was usually applied in support of a determination not to void the contract, the Comp. Gen. felt

it could not overrule the exercise of this discretionary authority in the case. Thus the contracting officer had the right to terminate the contract even though such action would not leave X without a claim under the Termination for Convenience clause.

COMMENT: The time for a final determination of size status is the time of award. However, to be considered for award, the bidder must make a good faith self-certification as a small business at the time of bid submission in order to have its bid considered responsive. Thus a large business, which indicated such status at bid opening, cannot have its bid considered for award even though it qualifies as a small business at the time of award. 40 Comp. Gen. 550. In another case the Comptroller General ruled that a company, that was on notice from the SBA that its status as a small business was in question at the time of bid submission, could be considered for award after taking affirmative action to qualify under the applicable standard. This action was considered as giving the bidder "two bites of the apple" and detrimental to the competitive process. 41 Comp. Gen. 47.

4. DOD Issues directive concerning suspension and debarment of Nonappropriated Fund Contractors.

Contractors, vendors, suppliers, business firms, individuals, and representatives thereof, will be suspended and debarred under the same policies and procedures as appropriated fund contractors. Armed Services Procurement Regulation, Section I, Part 6, is now applicable to nonappropriated fund purchasing throughout the Department of Defense. The Directive requires that all DOD activities establish procedures, controls, and necessary surveillance to assure that active and potential contractors are properly identified and recommended for suspension or debarment when the circumstances and events dictate such course of action. DOD Directive Number 4105.66, 23 October 1971, subject: Suspension and Debarment of Nonappropriated Fund Contractors.

FEDERAL STATUTES v. INTERNATIONAL AGREEMENTS

By International Affairs Division, OTJAG

A recent inquiry posed a situation exemplifying the operation of the rule that a federal statute which is inconsistent with an international agreement previously made on behalf of the United States supersedes the international agreement as domestic law of the United States. The inquiry involved an assertion that an American Indian who is a member of one of certain Indian tribes located in the Northeastern part of the United States collectively known as the Six Nations is exempt from induction by reason of the provisions of the treaties between the United States and the Six Nations. The particular treaty provision upon which such assertion was premised was not specified.

The relations of the United States with most of the American Indians are still governed by treaty. It has been said that the federal government has entered into some treaty relations with nearly every tribe within the territorial limits of the United States. The Indian treaties are published in the Statutes at Large. Those entered into between 1778 and 1842 are compiled in volume 7. Later treaties have

not been compiled in one volume. Indian Treaties are indexed by date and alphabetically by tribe in the Uncodified Laws and Treaties volume of the Federal Code Annotated. *Federal Indian Law*, prepared under the supervision of the Deputy Solicitor, Department of the Interior, contains a thorough analysis of the history and interpretation of the Indian treaties.

The Circuit Court of Appeals, Second Circuit, considered the question of whether a member of the Six Nations is subject to induction in *Ex parte Green*, 123 F. 2d 862 (2d Cir. 1941). Green argued that he was not a citizen within the meaning of the Selective Service Act. His position was that the statute conferring citizenship upon Indians was unconstitutional in that it violated the treaty rights of the Six Nations; the treaties having acknowledged the independence and sovereignty of the Six Nations. Assuming for purposes of argument that Green's interpretation of the treaty was correct, the court applied the rule that where a statute conflicts with an earlier treaty, the statute governs. It held that Green was a citizen of the United States.

COURT REPORTING EQUIPMENT STUDY

The United States Army Combat Developments Command Judge Advocate Agency is conducting a review and evaluation of Court Reporting equipment to replace the AN/TNH-16 and 17 (Recorder-Reproducer Set Sound). Accordingly, comments from the user in the field concerning the requirements for closed and open microphone recording equipment as well as personal evaluations of current "off

the shelf" equipment, i.e., McGraw-Edison, Norelco, IBM, Dictaphone, Lanier and Gray, must be received. Only if field comments are forwarded can this Agency be of assistance to the Judge Advocate officer in the field. Comments are to be addressed to LTC Bruce E. Stevenson, Commanding Officer, USA Combat Developments Command Judge Advocate Agency, Charlottesville, Virginia 22901.

ENVIRONMENTAL LAW SEMINAR

On January 11 and 12, 1972, the School will sponsor a program on Environmental Law. The seminar will deal generally with the federal laws regulating the quality of our envi-

ronment. After sketching these statutes as background, the major portion of the program will deal with the impact of these laws and regulations on the Department of the Army

both in a legal and an operational sense. Participants will include professors in this area, representatives from the Environmental Protection Agency, Army agencies, and the Office of The Judge Advocate General. While this program is designed primarily for the faculty and students in residence at the School and

personnel from JAGO, there are a limited number of openings for outside attendees. Inquiries concerning the seminar and attendance should be directed to: Captain B. R. Adams, Civil Law Division, The Judge Advocate General's School, 703-295-4230.

PERSONNEL SECTION

From PP&TO, OTJAG

1. **PROMOTION.** Congratulations to the following officer who was promoted on the date indicated:

LTC LA PLANT, Earl M., Jr. 18 October 1971

2. ORDERS REQUESTED AS INDICATED:

NAME	FROM	TO	DATE APPROX
COLONELS			
HANSEN, Lawrence P.	USAG Ft Leavenworth	US Disc Ft Leavenworth	Sep 71
WRIGHT, Charles K.	OTJAG	Hq, MDW	Oct 71
MAJORS			
ECKHARDT, William	Hq 3rd USA Ft McPherson	OTJAG	Nov 71
CAPTAINS			
BAILEY, Edward G.	USATCE Ft L'Wood	USARV	Jan 72
BELMONT, Valerie D.	USATCI Ft Ord	USAREUR	Dec 71
CARLSON, Don D.	Spec Proc Det Ft Dix	S-F USMA	Nov 71
CARPENTER, Ronald	Korea	Hq USATCI Ft Ord	Mar 72
DE PUE, John F.	Vietnam	S-F USMA	Dec 71
FOLEY, Patrick J.	3rd Armd Div	USA Jud w/sta Frankfurt	Nov 71
GORDON, Jonathan C.	USAG Ft Sheridan	USA Adj Gen Sch Ft B Hrsn	Nov 71
HUNT, Arthur L.	USATC Ft L'Wood	USARV	Jan 72
HUSKEY, Robert L.	USAG Ft Holabird	HQ USARSUPTHI	Jan 72
JONES, Michael R.	USA Sch Tng Ft Gordon	USAG Ft Campbell	Dec 71
KELLEHER, Dennis J.	82d Abn Div Ft Bragg	USAG Ft Sam Houston	Jan 72
LEAKE, David F.	V Corps	Hq 6th USA	Feb 72
MAGERS, Malcolm S.	Hq 8th Inf Div	USA Jud w/sta Nurnberg	Nov 71
MOGRIDGE, James D.	USA Jud	USARV	Jan 72
MOYE, Robert J.	USARV	USA Jud	Feb 72
OTTMER, Peter P.	Hq USA Sch Tng Cen Ft McClellan	USAREUR	Jan 72
PINKERTON, John P.	USARV	USA Jud	Jun 72
ROSS, Ronald F.	USATCI Ft Lewis	USAREUR	Jan 72
SWANWICK, William	USARV	4th Inf Div Ft Carson	Mar 72
WARRANT OFFICERS			
JOHNSON, Ole	USAREUR	OTJAG	Nov 71
SCHREIBER, Bland J.	OTJAG	USA Adj Gen Sch Ft B Hrsn	Dec 71

3. In Memoriam—Captain William N. Ciarlone. On 14 November 1971, Captain William N. Ciarlone, JAGC, died at Walter Reed Army Medical Center, Washington, D. C. Cause of death was a brain tumor.

Captain Ciarlone graduated on 20 June 1969 from The Judge Advocate's School's 51st Basic Class. Since that time he has been assigned to the Staff Judge Advocate Office, HQ United States Army Training Center, Infantry, Fort

Dix, New Jersey. Captain Ciarlone is survived by his wife and ten month old daughter.

Friends of Captain Ciarlone are establishing an educational fund for the daughter. Contributions may be made to Major Francis D. O'Brien, Executive Office, Office of The Judge Advocate General, Department of the Army, Washington, D. C. 20310.

4. In Memoriam—Colonel Edward Kent, JAGC Retired, 14 November 1971.

CURRENT MATERIALS OF INTEREST

Beginning with this issue, *The Army Lawyer* will make some of the articles and books listed in this section available to the field on a loan basis. Copies of law reviews and books available for loan will be limited and it is essential that those loaned be returned within two weeks so that others will have an opportunity to use the materials. Requests for materials will be filled on a first-come first-serve basis. Responsibility for loss of materials will rest with the borrower.

There may be some delay in filling requests for very recent materials while *The Army Lawyer* is securing its loan copies. Materials readily available such as The ABA Journal, AR's and other Army materials will not be made a part of the loan program. Also, some expensive books will not be made available due to our limited budget.

Requests for materials should be sent to Editor, *The Army Lawyer*, The Judge Advocate General's School, Charlottesville, Virginia 22901.

Articles

1. Comment, "A Jam in the Revolving Door: A Prisoner's Right to Rehabilitation," 60 Georgetown L. J. 225 (1971) (Single copy \$2.75 from The Georgetown Law Journal, 600 New Jersey Ave., N.W., Washington, D. C. 20001.)

2. Comment, "The Right of Government Employees To Furnish Information To Con-

gress: Statutory and Constitutional Aspects," 57 Va. L. Rev. 885 (1971) (Single Issue \$2.50 from Fred B. Rothman & Co., 57 Levning St., S. Hackensack, New Jersey 07606.)

3. Taur, "Selective Service and Conscientious Objectors," 57 ABAJ 976 (1971) (Not available on loan.)

4. Forman, "Should the Law of War Be Changed," 57 ABAJ 986 (1971) (Not available on loan.)

5. Wosepka, "Repatriation and the Chieu Hoi Amnesty Approach in Vietnam: Consequences and Prospects," 5 International Lawyer 637 (Volume 4, October 1971.)

6. Reynolds, "An Ephemeral Summary of Environmental Law," 13 AF JAG L. Rev. 169 (Summer 1971)

7. Everett and Hourcle, "Crime Without Punishment—Ex-Servicemen, Civilian Employees and Dependents," 13 AF JAG L. Rev. 184 (Summer 1971)

8. Cutts, "Criminal Responsibility: The New Federal Role v. Military Law," 13 AF JAG L. Rev. 202 (Summer 1971)

9. Hodgson, "United States v. Rathbun," 13 AF JAG L. Rev. 224 (Summer 1971)

AR's.

1. Change 8 to AR 27-10, "Legal Services" 7 Sept. 1971, effective 15 December 1971. This change modifies certain procedures under Article 15; changes the distribution of records

of punishment under Article 15; and authorizes military judges to issue search warrants.

2. Change 3 to AR 623-105, "Officer Efficiency Reports" 20 Oct. 1971, establishes the requirement for inclusion in efficiency reports of comments, as appropriate, to indicate the quality of performance in the equal opportunity area of commanders and all other officers with supervisory responsibility; and sets forth specific details which must be included in a special efficiency report submitted when an officer is relieved of his duties for cause.

3. Change 2 to AR 310-10, "Orders," 26 August 1971, effective 15 October 1971, adds references to the MCM in various orders relating to military justice.

4. Change 3 to AR 230-2 "Nonappropriated Funds and Related Activities—Personnel Policies and Procedures," 11 Nov. 1971, effective 1 Jan. 1972, revises chapters 1 and 2 and adds chapters 8, 11, 13 and 20. Chapter 20 supersedes AR 230-15. Matters added include Administrative Appeals and Employee Grievances, Adverse Actions, Labor-Management Relations, Civilian Applicant and Employee Security Program.

Civilian Short Courses.

1. Practicing Law Institute, Truth in Lending Problems Course; Jan. 7-8, 1972, Los

Angeles; Feb. 11-12, Miami; March 3-4, New York; March 17-18, Dallas. Registration Fee \$150. For further information write The Practicing Law Institute, 1133 Avenue of the Americas, New York, New York 10036.

2. Practicing Law Institute, Fourth Annual Criminal Advocacy Institute, December 10-11, Detroit; Jan. 21-22, Las Vegas. Registration fee \$100. For further information write The Practicing Law Institute, 1133 Avenue of the Americas, New York, N. Y. 10036.

Contest.

The Fund for the Advancement of Management in the Armed Forces, a private associate of the U. S. Army Logistics Management Center, Fort Lee, Virginia, has announced its annual essay contest. Closing date for submission of essays is 1 March 1972. First prize is \$300. General Rules for the competition and topic guidance may be obtained from the Fund at Fort Lee.

International Law Articles.

Col. Eberhard P. Detusch, 1800 Hibernia Bank Building, New Orleans, Louisiana 70112, editor of *The International Lawyer*, journal of the International and Comparative Law Section, ABA, has asked that quality articles be submitted for publication by the journal by any interested Army lawyers.